

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-174-C - ORDER NO. 2001-885
AUGUST 24, 2001

IN RE: Application of El Paso Networks, L.L.C. for a) ^{now} ORDER
Certificate of Public Convenience and)
Necessity to Provide Competitive Local)
Exchange and Facilities-Based Interexchange)
Telecommunications Services and for)
Alternative and Flexible Regulation.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of El Paso Networks, L.L.C. ("EPN" or the "Company") for authority to provide local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2000), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform

interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”) on June 25, 2001.

On August 2, 2001, counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until EPN provided written notice of its intent prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. EPN agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on August 7, 2001, at 2:30 p.m. in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided. EPN was represented by Faye A. Flowers, Esquire. Sam Beason, Director of Regulatory & Governmental Affairs for El Paso Global Networks Company, appeared and testified on

behalf of the Company. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff. Vivian Brown Dowdy, Auditor, and Eddie Coates, Rates Analyst, testified for the Commission Staff.

EPN seeks a certificate of public convenience and necessity to provide resold and facilities-based local exchange telecommunications and interexchange services throughout the State of South Carolina. EPN is a Delaware limited liability company and is an affiliate of El Paso Global Networks Company, a corporation organized under the laws of the State of Delaware. According to the testimony, El Paso Global Networks Company oversees the day-to-day operations of EPN.

Beason joined EPGN in January 2001. He has experience in telecommunications matters through his affiliation over the past six years with various law firms in Austin and Houston, Texas. Beason presented testimony regarding the Company's financial, technical, and managerial ability to offer telecommunications services in South Carolina. Regarding the Company's managerial and technical resources, EPN intends to assemble and operate a resold and facilities-based dedicated and private line fiber optic communications infrastructure. Moreover, the testimony reveals that EPN will enable its system with the latest generation of integrated optical networking equipment that provides access, multiplexing, switch extension, and transport services to carriers and service providers. The Company may also lease dedicated and private line fiber optic communications infrastructure to large corporate and government customers for high-bandwidth secure networks. Finally, EPN will lease the fiber optic facilities of other carriers or construct its own facilities, depending on current needs and market conditions.

Beason also testified that the Company believes that the advanced technical characteristics of its network will allow it to provide high levels of reliability, security, and capacity that its target customers typically demand as well as providing a more rapid time-to-provision by leveraging the Company's significant investment in operational support systems.

Beason also described the facilities EPN will use to provide its proposed local exchange services. According to the testimony, EPN intends to construct a facilities-based dedicated and private line, fiber optic communications infrastructure, enabled with the latest generation of integrated optical networking equipment. Additionally, the Company may augment its facilities and services with those purchased or leased from the incumbent local exchange carrier, competitive local exchange carriers, and/or interexchange carriers.

The record also includes the managerial and technical qualifications of key personnel responsible for operations of EPN. According to Beason, pursuant to a management agreement, El Paso Global Networks company personnel oversee the day-to-day operations of EPN. Greg C. Jenkins is the Company's President and Chief Executive Officer. Mr. Jenkins assumed his current position with EPN in July 2000. Prior to joining EPN, Jenkins served as president of El Paso Merchant Energy where he oversaw energy sales, trading, and risk management involving large volumes of energy throughout the United States and Canada. Paul Adam Roberts is the Company's Chief Information Officer. According to the record, Mr. Roberts has over fifteen years of Information Technology and business management experience. Prior to joining El Paso

Global Networks, Mr. Roberts served as Vice President, Operational Support Services, NETtel Communications, a nationwide integrated communications provider offering service packages of Internet, local and long distance, and a suite of value-added data and voice communications applications. D. Dwight Scott is the Company's Chief Financial Officer. Mr. Scott is responsible for all financial, investing, treasury and audit functions for El Paso Global Networks. Mr. Scott has held various banking and investment banking positions.

Regarding the Company's financial ability to offer telecommunications services in South Carolina, Beason testified EPN has sufficient financial resources in order to provide the services proposed in its application. The Company's ultimate parent, El Paso Corporation, is a \$50 billion energy company that is publicly traded on the New York Stock Exchange. EPN also has access to a \$500 million credit facility provided by El Paso Corporation upon which EPN may draw to fund its operations.

Dowdy reviewed the Company's financial information filed with the Commission. These financial statement were for the period ending November 30, 2000. The balance sheet indicated cash made up 3.52% of total assets. The current ratio for this period was .05 and retained earnings were also negative due to current and prior year losses. Dowdy also reviewed El Paso Network's parent company's Form 10-K. Dowdy opined that the parent company's Form 10-K indicates a substantial renewable credit and competitive advanced facility.

Coates presented the findings of the Utilities Department with respect to Staff's review of the Application of EPN. Coates also reviewed the Company's tariff and his

testimony included recommended modifications to the Company's tariff so the tariff complies with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. EPN is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. EPN is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. EPN has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that EPN's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2000).

5. The Commission finds that EPN will support universally available telephone service at affordable rates.

6. The Commission finds that EPN will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by EPN “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2000).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to EPN to provide competitive intrastate facilities-based and resold non-rural local exchange service in South Carolina. The terms of the Stipulation between EPN and SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation. In addition, EPN is granted authority to provide intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, on a facilities-basis and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. EPN shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. EPN’s local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for EPN’s competitive intrastate local exchange services a rate structure incorporating maximum rate levels with

the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, EPN's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of EPN which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of EPN including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to EPN also.

4. With regard to the interexchange residential service offerings of EPN, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. EPN shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. EPN shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

6. If it has not already done so by the date of issuance of this Order, EPN shall file its revised maximum long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the

findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. EPN is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's resale interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. EPN shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If EPN changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, EPN shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. EPN shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at www.psc.state.sc.us/forms. The title of the forms which the Company shall utilize to file

annual surveillance reports with the Commission is “Annual Information on South Carolina Operations for Interexchange Companies and AOS”.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

EPN shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” for which can be located at the Commission’s website at www.psc.state.sc.us/forms to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

13. EPN shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

14. By its Application, EPN requested a waiver of 26 S.C. Code Ann. Regs. 103-610 and 103-631 (1976 and Supp. 1999). The Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so it may maintain its records required by the Public Service Commission rules or necessary for the administration thereof, in Texas. The Company also requests a waiver 26 S.C. Code Ann. Regs. 103-631 (Supp. 2000). EPN

plans to enter into an agreement with the directory publisher of BellSouth Telecommunications, Inc. to include the names of its customers in BellSouth's directories. We grant the Company's request for a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) and 26 S.C. Code Ann. Regs. 103-631 (1976 and Supp. 2000). We also grant the Company's request to maintain its books in accordance with Generally Accepted Accounting Principles. However, the Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs EPN to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, EPN shall contact the 911 Coordinator in each county, as

well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

16. EPN shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, EPN shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The "Annual Report for Competitive Local Exchange Carriers" form can be located at the Commission's website at www.psc.state.sc.us/forms. This form shall be utilized by the Company to file annual financial information with the Commission.

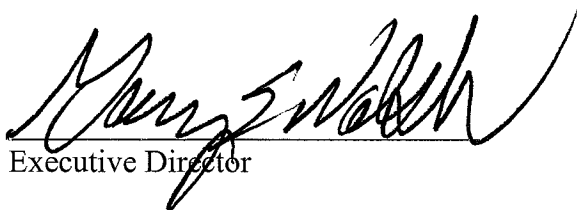
17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2001-174-C

Re: Application of El Paso Networks, LLC for a)
Certificate of Public Convenience and Necessity)
to Provide Facilities-based and Resold Local)
Exchange and Interexchange Telecommunications)
Services to Business Customers in the State of)
South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and El Paso Networks, LLC ("El Paso") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose El Paso's Application. SCTC and El Paso stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to El Paso, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. El Paso stipulates and agrees that any Certificate which may be granted will authorize El Paso to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. El Paso stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. El Paso stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any end user customer located in a rural incumbent LEC's service area,

unless and until El Paso provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, El Paso acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. El Paso stipulates and agrees that, if El Paso gives notice that it intends to serve an end user customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then El Paso will not provide service to any end user customer located within the service area in question without prior and further Commission approval.

6. El Paso acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

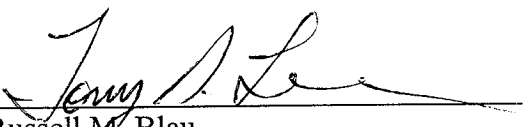
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and El Paso, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. El Paso agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. El Paso hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

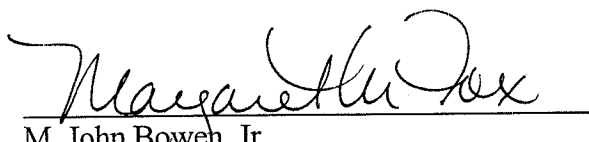
AGREED AND STIPULATED to this 1st day of August,
2001.

El Paso Networks, LLC:


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Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2001-174-C

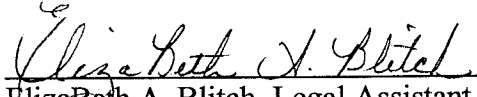
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to Provide Facilities-based and Resold Local)
Exchange and Interexchange Telecommunications)
Services to Business Customers in the State of)
South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

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August 1, 2001
Columbia, South Carolina